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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,325	08/13/2001	Stephen Paul Denis		7924

7590 03/01/2004  
STEPHEN P. DENIS  
P. O. BOX 6  
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EXAMINER

RHEE, JANE J

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 03/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/928,325

Applicant(s)

DENIS, STEPHEN PAUL

Examiner

Jane J Rheë

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If the period for reply specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2,3 and 7-15 is/are pending in the application.
- 4a) Of the above claim(s) 14 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,3 and 7-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/11/2004 has been entered.

### ***Election/Restrictions***

2. Newly submitted claims 14-15 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 14 and 15 are directed towards a method claim in class 47/32.3 and an apparatus claim in class 425/73.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 14-15 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Rejections Repeated***

3. The 35 U.S.C. 102 rejection anticipated by Alexander of claim 7 has been repeated for reasons previously made in Paper 12.

4. The 35 U.S.C. 103 rejection over Alexander of claims 2-3 has been repeated for reasons previously made in Paper 12.

***Response to Arguments***

5. Applicant's arguments filed 1/11/04 have been fully considered but they are not persuasive.

In response to applicant's arguments that Alexander fail to disclose an open mesh material, in col. 4 line 38-39, Alexander discloses that the material of the bag is air and water permeable, allowing drainage of water that may seep into the bag, therefore since air and water can flow into and out of the bag regardless of its insulating properties, the bag does posse a mesh material wherein mesh is defined as any of the open spaces in a net or network; an interstice. <sup>1</sup> In response to applicant's argument that the open mesh claimed by the applicant is which allows free circulation of air, Alexander discloses that the bag is permeable to water and air, wherein the definition of permeable is to spread or flow throughout; <sup>2</sup>, therefore Alexander's bag does allow free circulation of air since the water and air is spread and flowed throughout the bag.

In response to applicant's argument that the rejection of the open mesh material and the weight of the fabric is based on the personal knowledge of the employee therefore an affidavit is requested, the rejection is based solely on the reference of

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Alexander wherein Alexander either discloses or obviously discloses the claimed features of the present invention. In response to applicant's argument that a person skilled in the art of protection maturing fruits and vegetables from low temperatures would never provided Alexander with a fabric that has a weight of 86-113 grams per square meter and a cloth count of approximately 13 warps by 10 fills per square centimeter, since such a fabric has no insulation quality, Alexander discloses that the invention is not designed to protect fruits and vegetables in the event of a hard freeze because of its air and water permeability (col. 3 lines 28-31). It would have been obvious to one skilled in the art of protection maturing fruits and vegetables to obtain a less dense fabric such as a fabric that has a weight of 86-113 grams per square meter and a cloth count of approximately 13 warps by 10 fills per square centimeter for protecting fruits in warmer weather.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 2-3 recites the limitation "cover of claim 1" in line 1. There is insufficient antecedent basis for this limitation in the claim since claims 2-3 depend on cancelled claim 1.

### ***NEW REJECTIONS***

The following are new grounds of rejections for the newly claimed.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Alexander (5535543).

Alexander discloses a cover made of mesh material (col. 4 lines 38-40) that is resistant to deterioration from exposure to prolonged sunlight (col. 4 lines 37-38), allows air to flow through (col. 4 line 39) and has a means for anchoring the top of the bag to the fruitstalk of bunch (figure 3 number 34). Alexander discloses that the protective quantities are not limited to round fruit (col. 4 line 8-9) and that the size of the bag may be varied to accommodate any fruit or vegetable (col. 5 line 10-11).

8. Claim 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Kollath et al. (6023881).

Kollath et al. discloses a cover composed of a mesh material (col. 3 line 12), the cover being of ample sizes to enclose a fruit bunch (col. 1 line 55), and the cover having a first end and a second end (figure 1 number 18 and 12), the mesh material defining an opening large enough to allow the free circulation of air throughout the fruit bunch, and the mesh material defining an opening small enough to exclude insects and birds, provide a windbreak and partially shade the fruit bunch (col. 3 lines 11-14), the first end

being open and being capable of being anchored about a fruitstalk of the date bunch (col. 1 lines 53-56), and the second end being sealed (col. 1 line 53).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander.

Alexander discloses a cover for protecting fruits comprising a bag made of a woven open mesh polyester (col. 4 line 43 and figure 1 number 20) that is resistant to deterioration from exposure to prolonged sunlight (col. 4 lines 37-38), allows air to flow through (col. 4 line 39) and has a means for anchoring the top of the bag to the fruitstalk of bunch (figure 3 number 34). Alexander discloses that the protective quantities are not limited to round fruit (col. 4 line 8-9) and that the size of the bag may be varied to accommodate any fruit or vegetable (col. 5 line 10-11). The polyester fabric that Alexander discloses is water repellent and UV resistant to a certain degree as to all fabrics in general. Alexander fail to disclose that the fabric has a weight of 86-113 grams per square meter and that the cloth count of approximately 13 warps by 10 fills per square centimeter. Alexander fail to disclose that the first end is anchored about the fruitstack of the fruit bunch by a twist tie.

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Since Alexander discloses that the size of the bag may be varied to accommodate any fruit or vegetable (col. 5 line 10-11), it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided Alexander with the fabric that has a weight of 86-113 grams per square meter and a cloth count of approximately 13 warps by 10 fills per square centimeter, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Alexander discloses that the first end is anchored about the fruitstack of the fruit bunch by an elastic band (col. 4 lines 55-60), therefore since the elastic band and the twist tie serves the same function wherein the first end is anchored about the fruitstack of the fruit, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide a twist tie instead of an elastic band in order to anchor the first end of the fruitstack of the fruit.

10. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander in view of Kollath et al. (6023881).

Alexander discloses the cover described above. Alexander fails to disclose that the second end is marked with an identifying material.

Kollath et al. teaches that the second end of the bag is marked with identifying material for the purpose of repeling pest (col. 4 lines 62-63).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide the second end of the bag that is



marked with identifying material in order to repel pest (col. 4 lines 62-63) as taught by Kollath et al.

Alexander fails to disclose that the identifying material is a color coded thread. Kollath et al. teaches a bag made of fabric with pigmentation of a hue for the purpose of repelling pest (col. 4 line 62-63, col. 3 line 12).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Alexander with the identifying material is a color coded thread in order to repel pest (col. 4 line 62-63, col. 3 line 12).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 571-272-1499. The examiner can normally be reached on M-F.

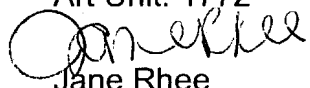
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nasser Ahmad can be reached on 571-272-1487. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and none for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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Handwritten signature of Jane Rhee in cursive script.

Jane Rhee

February 22, 2004

Handwritten signature of Nasser Ahmad in cursive script.  
NASSER AHMAD  
PRIMARY EXAMINER